

CLAIM OF DEBORAH A. PARKER,
CLAIMANT
AGAINST THE MARYLAND HOME
IMPROVEMENT GUARANTY FUND,
REGARDING THE ALLEGED ACTS AND
OMISSIONS OF GARY C. HICKS, T/A
G. C. HICKS CONTRACTORS ,
RESPONDENT

* BEFORE MICHAEL D. CARLIS,
* AN ADMINISTRATIVE LAW JUDGE
* OF THE MARYLAND OFFICE
* OF ADMINISTRATIVE HEARINGS
*
*
* OAH No.: DLR-HIC-02-13-46740
* COMPLAINT No.: 12 (90) 974

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RECOMMENDED DECISION

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STATEMENT OF THE CASE

On April 22, 2013, Deborah A. Parker (Claimant) filed a claim for reimbursement from the Guaranty Fund (Fund) with the Maryland Home Improvement Commission (Commission). The claim alleged that Gary C. Hicks, t/a G. C. Hicks Contractors (Respondent), performed unworkmanlike and inadequate home improvement that resulted in an actual loss of \$5,600.00. On November 20, 2013, the Commission issued a Hearing Order and forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On May 28, 2014, I convened a hearing in Largo, Maryland. Md. Code Ann., Bus. Reg. § 8-407 (2010).¹ The Claimant represented herself. The Respondent represented himself. Hope

¹ All subsequent citations to the Business Regulation Article are only to sections, unless otherwise noted.

M. Sachs, Assistant Attorney General, and the Office of the Attorney General, represented the Fund.

The contested case provisions of the Administrative Procedure Act, the Commission's Hearing Regulations, and the OAH's Rules of Procedure govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); Code of Maryland Regulations (COMAR) 09.01.03 and 09.08.03; and COMAR 28.02.01.

ISSUES

The issues are: (1) whether the Claimant incurred costs for restoration, repair, replacement, or completion that arose from the Respondent's unworkmanlike, inadequate, or incomplete home improvement;² and, if so, (2) what is the amount of the Claimant's compensable actual loss.

SUMMARY OF THE EVIDENCE

Exhibits

The following exhibits were admitted for the Claimant:

Claimant #1: Home Improvement Claim, dated April 19, 2013, with attachments, which include:

- Statement of case,
- Home Improvement Contract,
- Confidential Inspection Report,
- Electronic messages, dated October 15 and 16, 2011,
- Electronic message, dated October 19, 2011,
- Electronic message, dated November 2, 2011,
- Electronic message, dated October 30, 2011,
- Electronic messages, from October 19, 2011, through November 11, 2011,
- Electronic message, dated November 24, 2011, with photographs,
- Electronic message, dated November 30, 2011,
- Electronic messages, dated January 6 and 10, 2012,

² A "home improvement" means [] the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence[.]” Section 8-101(g)(2)(i).

- Proposal from Reliable Roofers, dated June 13, 2010,
- Proposal from Economic Roofing Company, dated January 23, 2014,
- Cancelled checks,
- Electronic message, dated January 13, 2012,
- Proposal from Century Remodeling and Improvement Co., dated March 21, 2013,
- Proposal from DMV Deck and Fence, Inc., dated March 14, 2013, and
- Sequential list of post-claim activity;

Claimant #2(A-H): Photographs; and

Claimant #3(a-o): Photographs.

The Respondent did not offer exhibits.

The following exhibits were admitted for the Fund:

GF #1: Print-out from the HIC regarding the Respondent's license;

GF #2: Notice of Hearing and Hearing Order; and

GF #3: Letter to the Respondent, dated June 5, 2012, and Home Improvement Claim Form, with attachment.

Testimony

The Claimant testified for herself.

The Respondent testified for himself.

The Fund did not offer witnesses.

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Commission licensed the Respondent as a home improvement contractor during all times relevant to this matter.
2. The Claimant owns a single-family home in Bowie, Maryland.

3. On August 20, 2011, the Claimant and Respondent entered into a home improvement contract.³ The Respondent agreed to remove the existing wood deck boards, railing, and flooring on the Claimant's nineteen feet by thirteen feet back deck and replace them with composite deck boards and a vinyl railing. The Respondent also agreed to prevent water from leaking from the roof of the Claimant's front porch. The Claimant agreed to pay \$9,540.00 to the Respondent for the home improvements.
4. The Respondent did not stop the water leak on the roof of the Claimant's front porch. The Respondent improperly installed deck boards on the Claimant's back deck. The floor wobbled when walked on.
5. The Claimant paid \$9,540.00 to the Respondent.
6. By August 6, 2012, the Claimant paid \$1,500.00 to Reliable Roofers (Reliable) to stop the water leak from the roof of her front porch.
7. By April 9, 2013, the Claimant paid \$4,100.00 to DMV Deck and Fence, Inc. (DMV), to replace the deck boards on the Claimant's back porch.
8. The total cost to complete and correct the Respondent's unworkmanlike and inadequate home improvement was \$5,600.00.

DISCUSSION

General Law

Under Section 8-405(a), the Commission may compensate an "owner . . . for an actual loss that results from an act or omission by a licensed contractor[.]" Under COMAR 09.08.03.03B(2), compensation is "only . . . for actual losses . . . incurred as a result of

³ A "home improvement contract" is "an oral or written agreement between a contractor and owner for the contractor to perform a home improvement." Section 8-101(h). An "[o]wner" includes a homeowner, tenant, or other person who buys, contracts for, orders, or is entitled to a home improvement." Section 8-101(k).

misconduct by a licensed contractor.” “Actual loss” is “the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Section 8-401.

COMAR 09.08.03.03B governs the measurement of actual loss:

(1) The Commission may not award from the Fund any amount for:

- (a) Consequential or punitive damages;
- (b) Personal injury;
- (c) Attorney’s fees;
- (d) Court costs; or
- (e) Interest.

...

(3) Unless it determines that a particular claim requires a unique measurement, the Commission shall measure actual loss as follows:

(a) If the contractor abandoned the contract without doing any work, the claimant’s actual loss shall be the amount which the claimant paid to the contractor under the contract.

(b) If the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor.

(c) If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant’s actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

Summary of the Claimant’s Evidence

On August 20, 2011, the Claimant and Respondent executed a home improvement contract, with an addendum. By the contract, the Respondent agreed to the following:

Remove wood/rails & flooring steps.
Replace w/ composite and vinyl [sic].
Paint trim white. Lights on steps[.]

By the addendum to the contract, the Respondent agreed to the following:

Remove old wood fixtures over entrance.
Prevent water leakage/replace/repair flashing[.]
Prime and paint white[.]
Remove rust spots over front door, re-caulk around door frame[.]
Power wash front walkway & porch. Repair concrete damage at front step.
Mount 4 lights purchased by owner.

The Claimant agreed to pay \$9,540.00 to the Respondent for the home improvements.

The record includes copies of four paid checks that the Claimant issued to the Respondent as follows: \$3,180.00 on August 20, 2011, \$3,180.00 on August 25, 2011, \$2,180.00 on October 11, 2011, and \$1,000.00 on December 7, 2011. The Respondent did not dispute that he was paid the full contract price of \$9,540.00.

The Claimant testified that the water leak from the roof of the front porch dripped onto an area directly above the front entrance. The Claimant testified, "I told you [about] a drip over the front of the door frame when I went in and out and that's what I wanted you to repair."

The Claimant also testified that after the Respondent began work on the roof of the front porch, brown water began leaking down the right side of the door frame and down the front right pillar, causing brown stains on both fixtures. The Claimant testified, "It [the water stains on the pillar] was a causal relationship to you doing the work, in my opinion." The Claimant additionally testified that there also occurred increased "pooling" of water on the roof and brown water stains on a decorative fixture above the door.

The record includes several electronic messages between the Claimant and Respondent regarding the leak from the front roof. On October 19, 2011, the Claimant wrote to the Respondent as follows:

Just wanted to bring to your attention some continuing concerns I have with the front porch. As I indicated in my prior email and the pictures I sent this morning, I am concerned about the brown stains that keep appearing on the

pole and now on the white decorative piece to the right of the front door. There is also a brown stain appearing on the white decorative piece above the front door. All together there are 4 places where I see brown stains.⁴ I also looked out of my window from inside my house and there is a lot of water settling on the roof of the porch.

Claimant #1 at 2.⁵

Less than two hours later, the Respondent responded as follows: "Just left your house. I see what your concerns are. We will take care of it. Thanks." Claimant #1 at 4.

On October 30, 2011, the Claimant wrote to the Respondent that "[t]here were no spills above the front door or on the decorative panel on the wall to the right of the door. YES!" Claimant #1 at 4. However, in the same writing, the Claimant said: "[T]here is a frozen brown spill along the front of the pole all the way down the pole, more than seen previously. Its [sic] a bit much that accumulated around the bottom area of the polet [sic]. I wonder if it is coming from that narrow opening where the bottom of the porch sits on top of the front pole." Claimant #1 at 4.

According to the Claimant, the Respondent apparently stopped the water from leaking onto the front door, but not the ponding of water on the roof or the brown water spillage onto the front pillar. The following is the final exchange of electronic messages between the Claimant and Respondent regarding the Claimant's dissatisfaction with the home improvement to the front porch area:

November 2, 2011. I received your voice message requesting that I let you know what remains to be done so that you can receive final payment. My biggest concern is the continuing water problem on the front porch area. I have a general concern about the large pool of water that settles on the roof following a big rain, more water than was accumulating before the work began. Also, I have a specific

⁴ The first documented mention of brown stains is in the Claimant's electronic message to the Respondent on October 16, 2011, although in that message there is a reference to an earlier email about brown stains on a pole.

⁵ The Claimant labeled attachments to Claimant #1 as 1 through 15. "Claimant #1 at 2" identifies attachment 2 at Claimant #1.

concern about the water that is settling around the base of the fixture on the right hand side of the roof. Not only is it still wet around the base of the fixture, it is also wet around the base of the pole directly under the fixture where water is also even though the rain occurred two days ago. The other area of [] both the roof and the front porch is dry. This concerns me because it appears that there is an opening somewhere around the fixture on the right hand side of the room where the water is accumulating and continuing to leak down the pole onto the area directly below it. I looked at the wet places on that right side again this evening. I have sent you several emails and pictures showing the wet areas. In response to the multiple emails to you about this, you acknowledged that you saw the problem and would take care of it. Our contract also indicates that the front porch leakages would be repaired.

Claimant #1 at 3.

November 30, 2011. Ms. Parker, per our contract we have completed your project. We also re-caulked over the door as you pointed out to us. Please let this email serve as a request for our final payment. Thanks.

Claimant #1 at 7.

January 6, 2012. This is my final request to you to repair the recent recurrent leaks down the pole on my front porch. Even though this leak originated while and quite possibly as a result of the work performed by your workers to repair the leakage problem on my front porch, per the terms of our written contract. You contend that repair of the leak on the pole, which originated while your company was working on my front porch, is not your responsibility, I believe that it is. Since we both have different positions on whether you are responsible, maybe an independent review of the contract terms is needed to clarify where the responsibility lies.

Final payment was made to you on Dec. 7, 2011 following the caulking of the area; however this action only temporarily stopped the leak problem on the pole. At that time you advised me to contact if further leakage occurred which I have done. I brought the recurred [sic] problem to your attention via 2 text messages and sent you a picture of the pole with the brown stain coming down the pole and the stain accumulated at its base, via my iphone Jan. 2, 2012. You responded on Jan. 2, 2012 to the second request by indicating you would come by the next day, but you did not come. To date, you still have not come by nor has there been any further contact to address the problem.

Claimant #1 at 8.

The record also includes B-Sure Home Inspection, Inc.'s Confidential Inspection Report (Report) based on an inspection of the home improvement on January 10, 2012. "The Inspection was performed for two particular issues the client has with the porch and the deck." Claimant #1.

The following is the Report's conclusion regarding the condition of the roof of the front porch: "The front porch roof covering material shows evidence of deterioration or leakage to the degree that action is required to determine the extent of repairs needed. Water is ponding on the roof, especially around the penetrations of the decorative railings. The roof is leaking."

Claimant #1. The Report also notes: "The flashing at the brick wall is installed under the roofing material. This creates seam and creates a basin for water to stand next to the brick wall. It will eventually leak at the seam." Claimant #1. Photographs attached to the Report depict the placement of the flashing, the ponding, and the damaged pillar.

The Claimant also testified that the Respondent did not follow several of the manufacturer's installation instructions when he installed the new deck boards to the rear deck. First, the Claimant testified that the Respondent placed the floor boards diagonally across the existing floor joists that were spaced sixteen inches apart. The installation instructions call for joist spacing of sixteen inches for perpendicular deck board placement and twelve inches for diagonal deck board placement. There was no dispute that the floor joists were spaced sixteen inches apart. Second, the Claimant testified that the Respondent installed the deck boards with too little side-by-side and end-to-end spacing. The installation instructions require three-sixteenth inch spacing. Photographs show much less than, and hardly any, spacing between deck boards. Third, according to the Claimant, the Respondent did not use hidden fasteners in the

installation of the floor boards. The installation instructions recommend specific types of surface fasteners. Fourth, the Claimant testified that the Respondent placed surface fasteners (nails or screws) too close to the end of floor boards. The installation instructions require that surface fasteners to be placed one and one-half inches from the end of floor boards. Finally, the Claimant testified that the nails that were used to fasten fascia to the deck were indiscriminately applied and not properly distanced along the fascia. The installation instructions call for the use of screws in perpendicular columns of three that are sixteen inches apart.

The Claimant additionally testified that the floor to her deck “did not feel secured when walked on,” and “shortly after the completion of the deck, the fascia board began pulling away from the decking boards.”

The Report also notes the following:

The decking is loose and rises and falls as you walk. The decking boards are not properly attached to each supporting joist. The boards are slotted on the edges and appear to be prepared for hidden fasteners. No hidden fasteners were located. The boards are fastened at the ends with a single screw and at a few places in the field with screws. Most decking instructions require fastening decking board at each joist. The technical specifications for these decking boards call for fastening at each joist and two fasteners at the ends, with specific types of fasteners, or the use of Fiberon or Phantom Hidden Deck Fasteners. The installation instructions also require a reduced joist spacing when decking boards are installed at an angle.

Claimant #1.

The Claimant testified that she obtained estimates from two contractors to fix the leak and ponding at the front roof. The record includes proposals from Reliable and from Economic Roofing Company (Economic). On June 13, 2012, Reliable agreed to do the following for \$1,500.00:

1. Remove existing roof down to plywood decking on portico of house.
2. Inspect existing plywood for damage due to leaking. If any rotten or damaged plywood is found, it will be replaced at a rate of \$50.00 per sheet for 1/2" plywood or \$75.00 per sheet for 3/4" plywood.

3. Install tapered insulation to divert water to sides.
4. Install base sheet, fastener will go through base sheet and insulation into roof plywood.
5. Install edge drip (white aluminum) into (3) sides of roof.

6. Install EPDM rubber as top coat, it will be adhered to base sheet.
7. Install new counter flashing on house wall (Black).
8. Seal around existing posts.
9. Remove all job related trash and debris from the job site.

On January 23, 2012, Economic agreed to do the following for \$1,710.00:

1. Remove and replace the roof on the front flat porch with new membrane roofing system.
2. Clean up and haul away resulting debris.
3. Provide a two year workmanship warranty.

The Claimant hired Reliable and, by August 6, 2012, paid the full contract price of \$1,500.00.⁶ According to the Claimant, she no longer has any problem with leakage from the roof.

The Claimant also testified that she obtained two estimates "to redo the work [on the deck.]" The record contains an estimate from DMV, dated March 14, 2013, for \$4,100.00 to do the following:

- * Remove and dispose of existing decking
- * Install new Composite decking
- * Railings to remain in place
- * Stairs (36" wide)
- * Replace 4 treads
- * Add Fascia to steps
- * Clean up excess materials

The record also contains a proposal from Century Remodeling & Improvement Co. (Century), dated March 21, 2013, for \$6,350.00 to do the following:

Remove existing PVC railings, decking and trim
Furnish and install new Timbertech Terrain grooved silver maple decking with hidden fastener system

⁶ The Claimant actually paid \$1,575.00 to Reliable. She testified that \$75.00 was to caulk an unrelated window.

Furnish and install new PCV trim around outside of deck -- .022 ga. Flashing
against house
Reinstall customer's PVC railing

On March 29, 2013, the Claimant hired DMV and, by April 9, 2013, paid the full contract price of \$4,100.00.⁷

Summary of the Respondent's Evidence

The Respondent testified that the Claimant initially told him she wanted to restore the deck at the back of her residence in "the most economical way." The Respondent also testified that when the Claimant showed him the front porch, he added "prevent water leakage" as an addendum to the contract. According to the Respondent, what he actually meant was that he would "try" to prevent the roof from leaking. In regard to the work he did to the front roof, the Respondent testified that he removed old shingles, put tar down, replaced the shingles, and adjusted the flashing. The Respondent testified that contractors who had worked on the roof before him improperly "changed the whole design" of the roof.

The Respondent also testified that it was the Claimant's decision to have the deck boards installed diagonally to the supporting joists. He acknowledged that, as between the Claimant and him, he was responsible for knowing how the deck flooring should have been installed. According to the Respondent, despite the manufacturer's installation instructions, it is acceptable to install the deck flooring diagonally over joists that are sixteen inches apart, "if you make certain adjustments." The Respondent testified he "adjust[ed]" some of the 4x4 rail supports, and he also thought he added a couple 4x4s.

⁷ The Claimant actually paid \$4,150.00. She testified that \$50.00 was a tip.

Analysis

The Claimant has the burden to prove that she suffered an actual loss as the result of the Respondent's misconduct. Section 8-407(e); COMAR 09.08.03.03A(3). This burden is met when the preponderance of the evidence establishes a measurable cost to restore, repair, or complete incomplete, inadequate, or unworkmanlike home improvement. See Section 8-401; Section 8-405; COMAR 09.08.03.03B. "Unworkmanlike" and "inadequate" are not defined in either the Maryland Home Improvement Law or its enabling regulations. As a result, the common meaning of these words, as found in a dictionary, provides an acceptable definition.

The prefix "un" means "not." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1358 (11th ed. 2006). "Workmanlike" means "characterized by the skill and efficiency typical of a good workman." *Id.* at 1443. Therefore, "unworkmanlike" is work that is not characterized by the skill and efficiency typical of a good workman.

The prefix "in" means "not." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 627 (11th ed. 2006). "Adequate" means "sufficient for a specific requirement." Therefore, "inadequate" means "not adequate" or not sufficient for a specific purpose. *Id.* at 627.

The leak to the roof of the front porch

The Respondent agreed to "prevent water leakage" from the roof of the Claimant's front porch. The Claimant acknowledged that when the contract was executed in August 2011, the water from the roof leaked onto the top of the front door, the decorative panel on the wall to the right of the door, and onto anyone who walked into her home on rainy days.

Although the home improvement contract did not specify what the Respondent would do to fix the leak, the Respondent testified that he removed shingles from the roof, put tar down,

replaced the shingles, and adjusted the flashing. On October 30, 2011, the Claimant acknowledged in an electronic message to the Respondent that the water stopped leaking onto the top of the front door and the decorative panel: "I just went out on the front porch to see if there were any brown spills. There were no spills above the front door or on the decorative panel on the wall to the right of the door. YES!" Claimant #1 at 4.

However, the Respondent did not fix the leak. Instead, the Respondent's work redirected the flow of the leak so that it began to fall onto the front porch's right the pillar. The Claimant wrote to the Respondent on November 2, 2011: "The wet problem in this area [around the base of the pillar] was not a problem prior to the start of the work. Rather the wet area was primarily above the front door area which you did repair and I am very appreciative of that effort."

Claimant #1 at 5. The Respondent never returned to fix the leak, as documented in this message to the Respondent on January 6, 2012:

This is my final request to you to repair the recent recurrent leaks down the pool on my front porch. Even though this leak originated while and quite possibly as a result of the work performed by your workers to repair the leakage problem on my front porch, per the terms of our written contract. You contend that repair of the leak on the pole, which originated while your company was working on my front porch, is not your responsibility, I believe that it is. Since we both have different positions on whether you are responsible, maybe an independent review of the contract terms is needed to clarify where the responsibility lies.

Final payment was made to you on Dec. 7, 2011 following the caulking of the area; however this action only temporarily stopped the leak problem on the pole. At that time you advised me to contact if further leakage occurred which I have done. I brought the recurred [sic] problem to your attention via 2 text messages and sent you a picture of the pole with the brown stain coming down the pole and the stain accumulated at its base, via my iphone Jan. 2, 2012. You responded on Jan. 2, 2012 to the second request by indicating you would come by the next day, but you did not come. To date, you still have not come by nor has there been any further contact to address the problem

Based on the Claimant's unrefuted testimony about the Respondent's failure to fix the leak, photographs that depict the unsightly effects of the leak onto the pillar and that show the ponding of water on the roof, electronic messages that corroborate the Claimant's testimony, and the Report that concluded the roof is "still leaking" and "[w]ater is ponding on the roof," I find that the Respondent's home improvement was inadequate to fix the leak from the roof of the Claimant's front porch. The Respondent did not "prevent water leakage [from the roof]." He merely diverted its pathway so that the water began to leak onto the right pillar at the end of the front porch. Many photographs in the record show unsightly brownish stains from the top to the bottom of the pillar and ponding of rainfall on the roof.

I am not persuaded that the Respondent is not responsible for the inadequate home improvement discussed above by his argument that the Claimant was satisfied with his work because she paid him the full contract price. The Claimant testified that she paid the Respondent because she thought she was obligated under the contract to make all payments. This reasonably explains why she made full payment because it is obvious from clear evidence in the record that she was not satisfied with the Respondent's performance.

I am also not persuaded that the Respondent is not responsible for the inadequate home improvement to the Claimant's front roof by his arguments that he told the Claimant that a prior contractor had "compromised" the front porch and that he was trying to help the Claimant by saying he would fix the leak but actually meant that he would try to fix the leak. These things may be true, but they do not change what the Respondent agreed to do by signing the home improvement contract. Moreover, they do not change the issue before me, which is whether the Respondent adequately performed this part of the home improvement contract. As discussed

above, the Respondent removed shingles, tarred the roof, replaced shingles, and adjusted the flashing.⁸ This work did not “prevent water leakage” from the roof. The water merely changed the location on the roof from which it leaked. The only reasonable conclusion is that the Respondent’s work on the roof was not adequate to fix the leak.

The installation of the deck boards

The Respondent agreed to remove the wood floor, steps, and railing from the Claimant’s existing wood deck and replace the floor and steps with composite deck boards and the wood railing with vinyl railing.

The Claimant alleged that the new deck “did not feel secured when walked on” and the manner of installation “demeaned any professional appearance the deck might have had.” The Claimant also alleged that the fascia board “detached” by February 2013; the railing “[was] not adequately adhered to the flooring”; and the “cap covers at the top of the railings had not been properly adhered to the railing posts.” Finally, the Claimant alleged that the Respondent did not follow the manufacturer’s installation instructions for proper installation of the flooring.

The Claimant testified that the Respondent installed the deck boards out of compliance with the manufacturer’s instructions in five areas. First, the Respondent installed the deck boards diagonally when they should have been installed perpendicular because the distance between the joists was sixteen inches. The manufacturer’s instructions call for perpendicular installation of the deck boards when floor joists are placed sixteen inches apart. The Report states that the “decking is loose and rises and falls as you walk.”

Second, the manufacturer’s instructions call for three-sixteenth-inch spacing between deck boards to account for expansion and contraction. The Claimant testified that the

⁸ The Report notes that the flashing was incorrectly installed: “The flashing at the brick wall is installed under the roofing material. This creates a seam and creates a basin for water to stand next to the brick wall. It will eventually leak at the seam.” Claimant #1.

Respondent spaced the deck boards too close together. Photographs of deck boards show hardly any space between them.

Third, manufacturer's instructions "strongly recommend" the use of specific hidden surface fasteners to secure the deck boards to each other. The Claimant testified that the Respondent did not use any hidden surface fasteners. The report states that "[n]o hidden fasteners were located."

Fourth, the manufacturer's instructions warn not to place surface fasteners within one and one-half inches from the ends of deck boards or one inch from the sides of deck boards. The Claimant testified that nails were placed inside the one and one-half inch setback area on many of the deck boards. Photographs corroborate her testimony. The report states that the "[t]he decking boards are not properly attached to each supporting joist."

Finally, the manufacturer's instructions require screws spaced sixteen inches apart to fasten the fascia to the deck. The Claimant testified that nails were indiscriminately nailed to the fascia without adherence to the sixteen-inch requirement. Photographs corroborate her testimony. The Claimant also testified that the fascia pulled away from the deck shortly after the Respondent completed the work.

Based on the evidence discussed above, I find that the Respondent's installation of the deck flooring was done in an unworkmanlike manner. A homeowner reasonably expects a contractor to install stable deck flooring so that it does not rise and fall or feel insecure when walked on.

The Respondent argues that he should not be held responsible for the unworkmanlike installation of the deck boards for three reasons. None is persuasive.

First, the Respondent argues that he is not responsible for the wobbly deck boards because he did not agree in the home improvement contract to make any alterations to the structure of the Claimant's deck. The Respondent did not identify any such deficiencies at the hearing.

While the Respondent is correct that he did not agree to correct any structural deficiency to the structure of the deck, the good workman who becomes aware of such a deficiency does not simply ignore the deficiency. He or she brings the deficiency to the homeowner's attention and renegotiates the terms of the original agreement. In this case, assuming the Respondent became aware of any significant structural deficiency, he failed to bring his concerns to the Claimant so that they could reach a different agreement on how to proceed.

Second, the Respondent argues that it was the Claimant's choice to have the deck boards installed diagonally to the floor joists. By this argument, the Respondent apparently believes that he and the Claimant were on equal footing in regard to knowledge of proper installation of deck flooring. However, that is a faulty premise. Homeowners reasonably expect and rely on licensed contractors to know more than they about proper workmanship. The Claimant chose to have the deck boards installed diagonally across the floor joists because she liked that appearance and because she lacked knowledge of how properly to install deck flooring on joists that are sixteen inches apart. The Respondent should have made it clear that such installation was not proper under the circumstances or he should not have held himself out as possessing the skill and knowledge of a good workman.

Finally, the Respondent argues that he made adjustments to accommodate the diagonal installation of the deck boards. According to the Respondent, he "adjusted" some of the 4-by-4 rail supports, possibly "added . . . a couple 4-by-4s for support," and cut certain angles on the

deck boards. The Respondent failed to explain how these adjustments made the diagonal installation of the deck boards acceptable. Furthermore, he offered no corroboration that any of the adjustments were actually made. Finally, assuming such adjustments were made, they were inadequate to prevent wobbling of the deck boards. For these reasons, I am not persuaded that any of the adjustments were actually made.

What was the cost to correct or repair the unworkmanlike or inadequate home improvement?

The record includes the Claimant's contract with Reliable to repair the roof on the front porch of the Claimant's home for \$1,500.00. The terms of the contract are within the scope of the original contract with the Respondent because Reliable offered essentially to do what the Respondent testified he did to stop the leak. The record also documents proof that the Claimant paid the full contract price to Reliable by August 6, 2012.

The record also includes the Claimant's contract with DMV to replace the deck boards and fascia to the Claimant's deck for \$4,100.00. The contract with DMV is within the scope of the original contract with the Respondent in that it provides for removal of the existing deck boards and the installation of new composite decking and fascia.⁹ The record also documents proof that the Claimant paid the full contract price by April 9, 2013.

The Amount of the Claimant's Actual Loss

As described above, "actual loss" is "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement." Section 8-401. The total cost to repair or complete the results of the Respondent's inadequate and unworkmanlike home improvement was \$5,600.00 ($\$1,500.00 + \$4,100.00 = \$5,600.00$).

⁹ DMV installed the deck boards perpendicular to the floor joists.

Also as described above, when a homeowner "has solicited ... another contractor to complete the contract," actual loss is measured by subtracting the original contract amount from the sum of the amount paid to the original contractor plus a reasonable amount to repair the original contractor's poor work. Based on the findings discussed above, the Claimant's actual loss is \$5,600.00 ($\$9,540.00 + \$5,600.00 = \$15,140.00 - \$9,540.00 = \$5,600.00$).

CONCLUSIONS OF LAW

I conclude that the Claimant has sustained a compensable actual loss of \$5,600.00 as a result of the acts and omissions of the Respondent. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405(e)(5) (2010 & Supp. 2013).

RECOMMENDED ORDER

I recommend the following:

A. The Maryland Home Improvement Commission **ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,600.00.

B. The Maryland Home Improvement Commission **ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order plus annual interest of at least ten percent as set by the Maryland Home Improvement Commission. Md. Code Ann., Bus. Reg. § 8-411(a) (2010).

C. The records and publications of the Maryland Home Improvement Commission reflect this decision.

Signature on File

August 26, 2014
Date Decision Issued

Michael D. Carlis
Administrative Law Judge

MDC